

The Berryville Town Council held one Public Hearing on July 11, 2006 in the Town Council Chambers at 15 E. Main Street, Berryville, Virginia.

The following were present:

Council -	Richard G. Sponseller, Mayor Jay Arnold, Recorder Wilson Kirby Lawrence Russell, III Barry Nicholson Allen Kitselman
Staff -	Keith R. Dalton, Town Manager Desiree Moreland, Asst. Town Manager/Treasurer Christy Dunkle, Asst. Town Mgr/Town Planner Chief Neal White, Police Department Celeste Heath, Town Clerk
Press -	Winchester Star: Bob Igoe, Clarke Times Courier: Rebecca Maynard

Mayor Sponseller welcomed the new Recorder, Jay Arnold.

Mayor Sponseller called the public hearing to order to hear comments on the following:  
Proposed Amendment of Cingular Water Tank Lease.

Mr. Dalton stated that the public hearing notice ran in the Winchester Star July 5, 2006 (copy attached) and that no public comment was received in the town office.

Mr. Dalton explained that 5 years ago the Town and Triton PCS entered into a lease agreement that permitted Triton to install 3 cell antennae on the northwest elevated water tank and to erect a small building at the base of the tower. The antennas were installed and a small building was erected. He said that the lease agreement was subsequently assigned to Cingular.

Mr. Dalton said that Cingular would like to remove the existing antennae and install 6 new antennae. He noted that Jack Rouviere, representing Cingular was present. Mr. Dalton said that the original agreement called for the lessee to leave room for three additional antennae of the town's choosing. He said that any changes to the lease should continue to include this provision noting that in the future a wireless backup for the Town's LAN, a SCADA repeater and another antenna for county use might be needed.

Council member Nicholson asked if there would be any more space to lease on the tower if this change takes place. Mr. Dalton said that he thinks there will not be any additional space but the engineers would have to review the plans to be certain.

Mr. Dalton recognized Mr. Rouviere of Cingular, who briefly outlined his company's proposal.

Mr. Dalton said that a consultant helped the Town with negotiation of the last lease. He suggested that the Council enter into closed session at the end of the meeting to discuss the terms of this agreement.

**Town of Berryville  
Public Hearing Notice**

The Town Council of the Town of Berryville, Virginia, will hold the following public hearing at 7:30 p.m., or as soon thereafter as the matter may be heard, on Tuesday, July 11, 2006 in the Council Chambers at 15 East Main Street, Berryville, to hear public comment on the following matter:

**Proposed amendment of Water Tank Lease Agreement**

The Town of Berryville entered into a Water Tank Lease Agreement with Triton PCS Property Company, L.L.C on June 26, 2001. This agreement has been assigned to Cingular.

The lessee desires to amend the lease agreement to increase the number of antennas that it may erect on the town's northwest elevated tank.

Copies of pertinent materials may be examined at the Town Office, 23 East Main Street, Berryville, Virginia during regular business hours. Any person desiring to be heard on this matter should appear at the appointed time and place.

The Town of Berryville does not discriminate against disabled persons in admission or access to its programs and activities. Accommodations will be made for disabled persons upon prior request.

By Order of the Town Council  
Keith R. Dalton, Town Manager

Published in *The Winchester Star* July 5, 2006

Recorder Arnold noted that there is a need for communication amongst town employees and that Cingular might provide push-to-talk phones for employees and that may eliminate a need for a wireless antenna.

Upon motion by Mr. Kitselman, second by Mr. Russell, the public hearing was closed. The motion passed unanimously.

Mayor Sponseller called the TOWN COUNCIL MEETING to order at 7:36 p.m. on July 13, 2006 in the Town Council Chambers at 15 E. Main Street, Berryville, Virginia.

On motion by Council member Nicholson, seconded by Council member Kitselman and passed, the minutes of the Council meeting of June 13, 2006 were approved as written.

Recorded Vote:       Aye – Wilson Kirby  
                              Allen Kitselman  
                              Barry Nicholson  
                              Lawrence Russell, III

                              Nay – None

                              Abstain – Richard G. Sponseller, Mayor  
                              Jay Arnold, Recorder

                              Absent – None

### **Citizen's Forum**

There was no citizen comment.

### **Report of the Mayor, Richard G. Sponseller**

Mayor Sponseller said that he looked at the plans for the Joint Administrative Building today, that the process is moving along nicely and that the Council should look at the plans and get any comments to Mr. Dalton or Mr. Kitselman.

By consensus, the next regular Council meeting was changed from August 8, 2006 to August 15, 2006.

### **Planning and Zoning Matters**

Ms. Dunkle reported that the Planning Commission held 5 public hearings at their last regular meeting.

Mr. Dalton asked if the poor condition of the sidewalk on Swan Avenue near Johnson Williams Middle School was discussed. She said it was and the school said that it can't afford to fix the sidewalk. She noted that the sidewalk was installed by the school, not VDOT.

Mr. Russell said that the school will have to find the money to do the repairs. Mr. Nicholson said that when they say they can't afford the repairs they are saying that it is

not a high enough priority.

The Council directed Ms. Dunkle to write a letter to the schools stating that the Council is interested in getting the situation abated.

Ms. Dunkle said that the definition of "family" was discussed by the Planning Commission and a public hearing will be held at the next regular meeting.

Recorder Arnold asked how the definition of family would affect apartment buildings. Ms. Dunkle said that 200 square feet per person is required.

Ms. Dunkle said that she has had a request from a local business to use the alley on Saturdays when the Craft Market is not in session. Mayor Sponseller asked who owns the alley. Mr. Dalton said that the town owns it. Ms. Dunkle said that there are liability issues. Mr. Dalton said that liability, as well as staffing are issues. Mr. Nicholson said that it would not be fair to let one business monopolize the space and that it would have to be available to all town businesses. The Council decided that the person who made the request may be able to be creative and create a coalition of businesses to get insurance and staff for such an endeavor. They directed staff to convey this message.

### **Report of the Town Manager**

Mr. Dalton asked if the Council had any further questions for Jack Rouviere of Cingular. The Council had no further questions.

### **Blight Abatement**

Bob Mitchell, Town Attorney spoke to the Council regarding options to address blight situations. He said that the ordinance addresses blight in general terms of nuisance. The question is "what is a nuisance?"

He said that because of newly adopted sections of the State Code the town has the ability to address blight issues more directly. He then presented a draft ordinance pursuant to this new enabling legislation that would be adopted under Section 5.5 of the Town Code. He noted that this would allow the town to acquire or repair a property by purchase or by eminent domain. The ordinance would also add a definition of blighted property as defined by the new enabling legislation. There was a general discussion of how the process would work and notices required.

Mr. Dalton asked if there are any localities that have developed abatement ordinances. Mr. Mitchell said that there are and that he can get copies of those ordinances for the Council.

Mayor Sponseller suggested that the Council discuss this matter further before setting a public hearing. The Council agreed.

### **Draft Service Area Agreement**

Mr. Mitchell presented a draft service area agreement that he put together for the County of Clarke. He said that there is a Service Area Agreement in place from 2000 that basically says that the Town would not extend water and sewer into the County without

the County's consent. This agreement defines the area where water and sewer expansion is reasonable.

Mr. Mitchell said that the draft agreement shows the exclusive service area including the park, high school and public property in that area. He noted that the area would probably be amended to include the new high school property.

There was a general discussion of the draft agreement. Mr. Dalton noted that any water and sewer facilities built on County property would be transferred to the town once they meet town standards. The Town Council directed staff to review this matter and make recommendations to Council.

#### Lease Renewal – 15 East Main Street

Mr. Dalton said that the Council Chamber/Planning Office space has been leased since 1991. This new lease would raise the lease rate from \$500 a month to \$800 a month. He said that this new lease would last until just passed the time the new offices should be finished and the owners have indicated that they will be flexible on the lease at that point.

Mayor Sponseller said that this is a very fair proposal.

It was moved by Council member Kitselman, seconded by Council member Nicholson and passed, that the Council of the town of Berryville authorizes the Mayor and Recorder to renew the lease at 15 East Main Street.

Recorded Vote:       Aye – Richard G. Sponseller, Mayor  
                              Jay Arnold, Recorder  
                              Wilson Kirby  
                              Allen Kitselman  
                              Barry Nicholson  
                              Lawrence Russell, III

Nay – None

Absent – None

#### Reports of Standing Committees

a.       Community Improvements – Barry Nicholson, Chair  
A meeting will be held on August 9, 2006 at 5:00 p.m.

b.       Streets & Utilities – Barry Nicholson, Chair  
A meeting will be held on August 8, 2006 at 4:00 p.m.

c.       Planning Commission Liaison - Lawrence Russell, Chair  
Nothing to add.

d.       BADA Liaison  
Nothing to add.

e. Personnel/Appointments – Richard Sponseller, Chair

The following Committee assignments were made by the Mayor:

Budget and Finance  
Richard G. Sponseller, Chair  
Jay Arnold

Community Improvements  
Allen Kitselman, III, Chair  
Wilson Kirby

Personnel Committee  
Richard G. Sponseller, Chair  
Jay Arnold

Police and Security  
Barry Nicholson, Chair  
Lawrence Russell, III

Streets and Utilities  
Wilson Kirby, Chair  
Barry Nicholson

Berryville Area Development Authority  
Allen Kitselman, III

Berryville Planning Commission  
Lawrence Russell, III

f. Budget/Finance/CIP

It was moved by Council member Nicholson, seconded by Council member Kirby and passed, that the Council of the Town of Berryville adopt the attached Resolution to charge off delinquent real estate and personal property taxes for Fiscal Year 2000.

Recorded Vote:      Aye – Richard G. Sponseller, Mayor  
                             Jay Arnold, Recorder  
                             Wilson Kirby  
                             Allen Kitselman  
                             Barry Nicholson  
                             Lawrence Russell, III

Nay – None

Absent – None

TOWN COUNCIL  
MOTION FOR APPROVAL:  
ADOPTION OF RESOLUTION TO CHARGE OFF DELINQUENT REAL ESTATE AND  
PERSONAL PROPERTY TAXES FOR FISCAL YEAR 2000

Date: July 11, 2006

Motion By: Barry Nicholson

Second By: Wilson Kirby

I hereby move that the Council of the Town of Berryville adopt the attached resolution to charge off delinquent real estate and personal property taxes for Fiscal Year 2000.

VOTE:

Aye: Richard G. Sponseller, Mayor  
Jay Arnold, Recorder  
Wilson Kirby  
Allen Kitselman  
Barry Nicholson  
Lawrence Russell, II

Nay: None

Absent: None

ATTEST: \_\_\_\_\_  
Harry Lee Arnold, Jr., Recorder

RESOLUTION

WHEREAS, Section 58.1-3940 of the Code of Virginia, 1950, as amended, provides the collection of local personal property taxes shall only be enforceable for five years following December 31 of the year for which such taxes were assessed, and

WHEREAS, the attached personal property taxes assessed by the Town of Berryville, Virginia for tax year 2000, have remained delinquent for the year for which such taxes were assessed and are therefore rendered unenforceable,

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Town of Berryville, Virginia, in meeting duly assembled this eleventh day of July 2006, that the attached list of delinquent personal property taxes for tax year 2000 shall be charged off the tax records of the Town of Berryville as uncollectible.

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Richard G. Sponseller, Mayor

I hereby certify that the foregoing Resolution was duly adopted by the Council of the Town of Berryville in meeting assembled July 11, 2006.

ATTEST:

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Harry L. Arnold, Jr., Recorder



Ms. Moreland said that an ordinance must be passed to allow the new Recorder, Mr. Arnold to sign checks.

It was moved by Council member Nicholson, seconded by Council member Kitselman and passed, the Council of the Town of Berryville to adopt the attached Ordinance Amending Section 2-6 Signing of checks on Town funds, of the Code of the Town of Berryville.

Recorded Vote:       Aye – Richard G. Sponseller, Mayor  
                              Jay Arnold, Recorder  
                              Wilson Kirby  
                              Allen Kitselman  
                              Barry Nicholson  
                              Lawrence Russell, III

Nay – None

Absent – None

g.       Police and Security Committee

Chief White presented a revised bike path ordinance correcting a typo that was discovered at the last meeting.

It was moved by Council member Nicholson, seconded by Council member Kitselman that the Council of the Town of Berryville adopt the attached Ordinance 10-19 Operation of vehicles powered by engines or electricity on public property, public rights of way, bike paths, etc. not open to the public for vehicular use.

Recorded Vote:       Aye – Richard G. Sponseller, Mayor  
                              Jay Arnold, Recorder  
                              Wilson Kirby  
                              Allen Kitselman  
                              Barry Nicholson  
                              Lawrence Russell, III

Nay – None

Absent – None

TOWN COUNCIL  
MOTION FOR APPROVAL:  
ADOPTION OF ORDINANCE AMENDING SECTION 2-6 SIGNING OF CHECKS ON  
TOWN FUNDS, OF THE CODE OF THE TOWN OF BERRYVILLE

Date: July 11, 2006

Motion By: Barry Nicholson

Second By: Allen Kitselman

I hereby move that the Council of the Town of Berryville adopt the attached Ordinance Amending Section 2-6 Signing of checks on Town funds, of the Code of the Town of Berryville.

VOTE:

Aye: Richard G. Sponseller, Mayor  
Jay Arnold, Recorder  
Wilson Kirby  
Allen Kitselman  
Barry Nicholson  
Lawrence Russell, II

Nay: None

Absent: None

ATTEST: \_\_\_\_\_  
Harry Lee Arnold, Jr., Recorder

AN ORDINANCE AMENDING SECTION 2.6 OF THE CODE OF THE TOWN OF  
BERRYVILLE

BE IT ORDAINED, by the Council of the Town Of Berryville, that  
Section 2-6 Signing of checks on Town funds, of the Code of the  
Town of Berryville be amended as follows:

Checks for duly authorized disbursements of town funds shall be  
signed by either the town treasurer or town manager and, except  
for payroll checks, cosigned by either the mayor or recorder.

Signed:\_\_\_\_\_Date:\_\_\_\_\_  
Richard G. Sponseller, Mayor

Attest:\_\_\_\_\_Date:\_\_\_\_\_  
Harry L. Arnold, Jr., Recorder

TOWN COUNCIL

MOTION FOR APPROVAL:

ADOPTION OF ORDINANCE 10-19 OPERATION OF VEHICLES POWERED BY  
ENGINES OR ELECTRICITY ON PUBLIC PROPERTY, PUBLIC RIGHTS OF WAY,  
BIKE PATHS, ETC. NOT OPEN TO THE PUBLIC FOR VEHICULAR USE

Date: July 11, 2006

Motion By: Barry Nicholson

Second By: Allen Kitselman

I hereby move that the Council of the Town of Berryville adopt  
the attached Ordinance 10-19 Operation of vehicles powered by  
engines or electricity on public property, public rights of way,  
bike paths, etc. not open to the public for vehicular use.

Aye: Richard G. Sponseller, Mayor  
Jay Arnold, Recorder  
Wilson Kirby  
Allen Kitselman  
Barry Nicholson  
Lawrence Russell, II

Nay: None

Absent: None

ATTEST: \_\_\_\_\_  
Harry Lee Arnold, Jr., Recorder

AN ORDINANCE THE CODE OF THE TOWN OF BERRYVILLE ADDING SECTION  
10-19 BIKE PATH

10-19 Operation of vehicles powered by engines or electricity on public property, public rights of way, bike paths, etc. not open to the public for vehicular use

It shall be unlawful for any person to operate or permit to be operated any motor vehicle, motorcycle, mini-bike, moped, go-cart, ATV, golf cart, motor scooter or other form of transportation propelled by an internal combustion engine or electricity with the exception of electric powered personal assistive mobility devices, upon public property, public rights of way on private property, bicycle paths or trails which are not held open to the public for vehicular use. This section shall not apply to the following:

- 1) The operation of emergency vehicles and governmental vehicles upon such property.

Violation of this section shall be a class 4 misdemeanor with a minimum fine of \$50.00. If life and limb or property of anyone lawfully using such public property, public rights of way on private property, bicycle paths or trails is endangered by persons engaged in unlawful acts in violation of this ordinance, the violation will then be punished as a class 1 misdemeanor.

State code reference: 15.2-2028 regulation of traffic, 15.2-1806(B) regulation of trails, 46.2-100 definition of electric personal assistive mobility device.

Chief White presented a General Order Regarding Records Management. He said that DCJS requires a written policy to be adopted regarding internal procedures on records retention, dissemination, and penalties for violations.

It was moved by Council member Nicholson, second by Council member Kitselman that the Council of the Town of Berryville execute the attached General Order 21 Regarding Records Management.

Recorded Vote:       Aye – Richard G. Sponseller, Mayor  
                             Jay Arnold, Recorder  
                             Wilson Kirby  
                             Allen Kitselman  
                             Barry Nicholson  
                             Lawrence Russell, III

Nay – None

Absent – None

BERRYVILLE TOWN COUNCIL  
MOTION FOR AUTHORIZATION OF ATTACHED  
GENERAL ORDER NUMBER 21

Date: July 11, 2006

Motion By: Barry Nicholson

Second By: Allen Kitselman

I move that the Council of the Town of Berryville execute the  
attached General Order Number 21.

Aye: Richard G. Sponseller, Mayor  
Jay Arnold, Recorder  
Wilson Kirby  
Allen Kitselman  
Barry Nicholson  
Lawrence Russell, II

Nay: None

Absent: None

ATTEST:

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Harry Lee Arnold, Jr., Recorder

## **GENERAL ORDER**

Subject: Records Management and Dissemination

_____ Chief of Police	_____ Number    Effective Date 21
_____ Mayor	_____ Approved by Council
_____ Recorder	

### **POLICY**

Records will be stored and managed in accordance with all applicable State and Federal guidelines. Criminal History and Police Department records shall not be released except through procedures established by the Chief of Police in accordance with State and Federal guidelines. In releasing information each request will be judged individually based on the requesting party's legal and valid reason to have access to the information in accordance with State and Federal laws pertaining to police record management.

### **PURPOSE**

The purpose of this order is to set departmental policy pertaining to the security and dissemination of criminal history record checks, and departmental records.

### **TERMINOLOGY**

- A. **"Arrest Record"** shall mean a compilation of information, centrally maintained in law enforcement custody, of any arrest or temporary detention of an individual, including the identity of the person arrested or detained, the nature of the arrest or detention, the charge, if any, and the final disposition or present status of each charge of arrest included in the record.
- B. **"Investigative Records"** shall mean the reports of any systematic inquiries or examination into the criminal or suspected criminal acts which have been committed, are being committed, or are about to be committed.
- C. **"Reportable Incidents Records"** shall mean compilations of complaints received by a law enforcement agency and action taken by the agency in response thereto.



- D. **“Non-criminal Incident Records”** shall mean compilations of non-criminal occurrences of general interest to law enforcement agencies, such as missing persons, suicides and accidental deaths.
- E. **“Criminal Justice Agency”** is defined as a court or any other governmental agency or sub unit thereof which as its principal function performs the administration of justice.
- F. **“Expunge”** means removal by a court order from public inspection or access.
- G. **“Seal”** means to physically secure to prevent inspection, except where specified by court order.

## **I. PROCEDURES**

### **1. Records Administration**

- A. Records shall be maintained in a secured section of the department with access limited to personnel authorized by the Chief of Police. No original records are permitted outside of this secured section.
- B. A daily back up of automated records shall be done daily, once a week this data will be secured to an off-site location.
- C. The release of information from departmental records will be in accordance with the Code of Virginia, §19.2-389. Employees with concerns or questions regarding the release of information shall contact the Chief of Police or his designee.
- D. Department employees shall not confirm or deny the existence or non-existence of a criminal history record to persons or agencies that would not be eligible to receive the information.
- E. Persons or agencies requesting criminal history information other than for Berryville convictions shall be referred to the Central Criminal Records Exchange in Richmond, Virginia.
- F. The release of criminal history record information to an individual or entity not included in §19.2-389 of the Code of Virginia is unlawful and unauthorized. An individual or criminal justice agency that releases criminal history record information to a party which does not clearly belong to one of the categories of agencies and individuals as outlined in § 19.2-389 of the Code is subject to being denied access to state and national criminal history record information on a temporary or permanent basis and to the administrative sanctions described in 6VAC20-120-100. Unlawful dissemination contrary to the provisions of this chapter is also a Class 2 misdemeanor (see § 9-195 of the Code of Virginia).
- G. The Berryville Police Department will retain records in accordance with the Code of Virginia, § 42.1-76, “The Virginia Public Records Act”. No records are to be retained, transferred, destroyed or otherwise disposed of in violation of this schedule. Any questions concerning record retention should be addressed to the Chief of Police or his designee, who maintains a current and accurate copy of the “Records Management Manual for Local Government Agencies”, as prepared by the Virginia State Library and Archives.

### **2. Records**

- A. A central repository of records is maintained by the Berryville Police

Department to include:

- (1) IBR reports
- (2) Arrest reports
- (3) Traffic accident reports
- (4) Adult arrest records
- (5) Juvenile arrest records
- (6) Traffic summons
- (7) Suspended or closed vice, organized crime and intelligence information case files which contain no sensitive source information.
- (8) Disposition on criminal cases.
- (9) Other administrative files as directed by the Chief of Police

B. Active case files are maintained by investigations and patrol officers. These files are to remain out of public accessibility by locking them in file cabinets or desk drawers when the officer is not directly working with the information contained in the file.

### 3. Criminal History Files

A. A personal identification number is assigned by the computer, and a criminal history file is maintained on each person arrested.

B. Criminal history files include:

- 1) A person oriented identification number is assigned by the computer – the PID – to each person arrested. All subsequent arrests and information concerning this person may be referenced by this number, or cross referenced by name. This system ensures that no identification numbers (PID) are duplicated or skipped.
- 2) Fingerprint cards, allowed by §19.2-392 of the Code of Virginia.
- 3) Photographs, as allowed by § 19.2-392 of the Code of Virginia.
- 4) Records of arrest report.
- 5) Criminal history transcripts if available (normally these files are immediately accessible through VCIN / NCIC system).
- 6) CCRE requirements – Reports to Central Criminal Records Exchange – Fingerprints and photographs shall be required for those offenses listed in Appendix A of this order.
  - a. Persons arrested and to be released on a summons shall not be held in custody after the issuance of the summons for the purpose of completing the CCRE reports. Refer to §19.2-74 of the Code of Virginia.
  - b. In cases where a person is arrested for a CCRE reportable offense and is released on a summons, the CCRE processing shall be completed by the Police Department after the disposition of guilt is entered in court. This applies when a misdemeanor is released in the field on a written summons. It does not apply to felony arrests or arrests on a warrant in

which the person is brought before a special magistrate and subsequently released on a bond or other form of pretrial release.

- c. All CCRE forms must be sent to Central Records as a package.
- d. In all CCRE reportable cases where an arrested person is not released in the field but is taken before a special magistrate, the arresting officer shall be responsible for the completion of CCRE reports.

#### C. Privacy and Security

- 1) The records room shall be locked and secured from unauthorized access during non-business hours.
- 2) The records room shall be protected from unauthorized access during normal business hours. All requests for information protected by state statute shall be processed in accordance with § 19.2-389 of the Code of Virginia and departmental policy. The Criminal History Record Conviction Data Request form (see Attachment A) shall be prepared prior to dissemination of any information to non-criminal justice personnel.
- 3) Persons authorized to release criminal history record information shall maintain a record of all prepared Criminal History Record Conviction Data Requests.
- 4) Dissemination of Adult Criminal History Information may be made to:
  - a. Authorized officers or employees of criminal justice agencies (i.e., FBI, State Police, Sheriff's Department), probation and parole, juvenile detention homes, etc.
  - b. Individuals and agencies for research purposes provided an agreement exists addressing the security and confidentiality of the data. No such agreements currently exist which involves this department.
  - c. Agencies of state / federal government conducting investigations to determine employment suitability or eligibility for security clearances allowing access to classified information.
  - d. Individuals or agencies authorized by court order or rule.
  - e. Agencies of any political subdivision of the state conducting applicant investigations, for public employment, permit, or license, under the authority of a local ordinance, a copy of which must be furnished to us. Only conviction data may be released.
  - f. Public or private agencies when and as required by law to investigate applicants for foster or adoptive parenthood.
  - g. Authorities for the purpose of granting citizenship or for international travel (i.e., visas, passports).
  - h. Individuals and agencies pursuant to a specific agreement with the criminal justice agency to provide services required

- for the administration of criminal justice. No such agreements currently exist which involve this department.
- i. Individuals and agencies which require criminal history information to implement state / federal statute, or executive orders of the President or Governor that expressly refer to criminal conduct and contain requirements or exclusion expressly based on such conduct.
  - j. Public service companies conducting applicant investigation when such employment involves personal contact with the public or when past criminal conduct of applicant would be incompatible with the nature of employment.
  - k. All persons requesting a copy of their own criminal history record information.
  - l. Administrators and board presidents of and applicants for license or registration as a child welfare agency for the conduct of investigations with respect to employment and foster and adoptive parent applicants for private child case agencies.
  - m. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment.
  - n. The state lottery department for the conduct of investigations as set forth in the state lottery laws.
  - o. Licensed nursing homes, hospitals, and home care organizations for the conduct of applicants for compensated employment in licensed nursing homes, subject to limitations set by law.
  - p. Licensed homes for adults, district homes for adults, and licensed adult day care centers for the compensated employment in licensed homes for adults.
  - q. The Alcoholic Beverage Control Board for the conducting of investigations.
  - r. The State Board of Elections and authorized officers and employees thereof in the course of conducting necessary investigations with respect to registered voters, limited to any record of felony convictions.
  - s. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for those individuals who are committed to the custody of the commissioner for the purpose of placement, evaluation, and treatment planning.
  - t. Any alcohol safety action program certified by the Commission of the Virginia Alcohol Safety Action Program for the assessment of habitual offenders.
  - u. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Mental Health, Mental

- Retardation and Substance Abuse, for determining the applicant fitness for employment or for providing volunteer or contractual services.
- v. The Department of Mental Health, Mental Retardation and Substance Abuse Services, and facilities operated by the department for the purpose of determining individuals fitness for employment.
  - w. The governing boards or administrators of private or parochial elementary or secondary schools which are accredited by a statewide accrediting organization recognized prior to January 1, 1996.
  - x. Other entities as allowed by law.
- 5) Information concerning the arrest of an individual may not be disseminated to a non-criminal justice agency or individual if an interval of one year has elapsed from the date of arrest and no disposition has been recorded and no active prosecution is pending.
  - 6) The dissemination control book will be completed when criminal history record information is disseminated to persons not employed by the Berryville Police Department. The Criminal History Record Conviction Data Request will be filed by year request is maintained, and maintained for a period of three (3) years.
  - 7) Persons requesting the dissemination of CHRI which is reported to the Central Criminal Records Exchange (i.e. Class I, II misdemeanors, felonies) will be provided a Criminal History Record Request form (see Attachment A) and instructed to make a direct inquiry.
  - 8) If there are any questions regarding to whom information can be released, one of the following avenues should be taken:
    - a. Check with the Chief of Police or records clerk.
    - b. Ask the requesting company or person to submit a copy of the federal / state statute or court order permitting them to access to the information.
  - 9) Dissemination for Employment
    - a. Requests for criminal history record information by prospective employers, except those specifically authorized by law, may be honored by the Berryville Police Department subject to the following conditions:
      - The offenses concerned are not required to be reported to CCRE. Only conviction data may be released.
      - The prospective employer must furnish the records clerk with a signed, notarized statement from the individual concerned, requesting the release of information.
      - Requests for offenses reportable to CCRE will be referred to CCRE, without confirming or denying the existence of a record.

#### 10) Review

- a. An individual or his attorney may upon proper identification, review any criminal history record information maintained on that individual by this department or the CCRE. All such requests shall be handled by the Chief of Police.
- b. Prior to any such inspection, the Chief of Police may request a verification of the individual's identity through the furnishing by the individual of a set of inked fingerprints. Such verification shall be required for requests to inspect CCRE records. If the individual's fingerprints are not on file, they will be mailed to CCRE for verification prior to an inspection of a CCRE record.
- c. At a minimum, for inspection of a record maintained by this department, verification of identity shall be through presentation of a valid operator's license, valid non-operator's identification card, or valid photo identification of a state or federal agency.

#### 11) Challenge

- a. All requests to challenge a criminal history record will be referred to the Chief of Police who will proceed as specified in the rules and regulations of the Criminal Justice Services Board.
- b. In the event an error in records maintained is detected, all known copies of the record shall be corrected. The Chief of Police shall notify, in writing, all agencies and individuals who have received the record of the correction. The Chief of Police shall also, upon request, give the individual or his attorney a list of all non-criminal justice agencies to whom data has been furnished.

#### 12) Expungement

- a. Records may be expunged by the court alone.
- b. In the event of an expungement order, all records of the arrest will be placed in an envelope and sealed. These records include the department arrest report, CCRE arrest report, fingerprint cards, photos, offense reports, and all other documents which indicate that an arrest took place. The envelope shall be assigned a sequential number which will be marked on the upper left hand corner of the envelope. An index card will be maintained reflecting the sequential number and name of the individual. The index card will be placed in an index file, which will be kept proximal to the sealed records.

- c. These records will be kept in separate locked file in the records room. The Chief of Police shall maintain the keys for this file.
- d. No one shall, under any circumstances whatsoever review or disclose any information from such sealed record without an order from the court which ordered the record expunged. Violation of this section (§ 19.2-392.3 Code of Virginia) is a Class 1 Misdemeanor.

### 13) Retention of Juvenile arrest information

- a. Juvenile fingerprint cards, photographs, and arrest records authorized for retention will be separately and securely maintained. Files containing juvenile information will clearly be marked "JV" followed by the incident number on the folder tab.
- b. Retention and disposition schedules / statutes, as approved by the State Archivist for Records and mandated by Virginia Codes, will be maintained in the Records room.
- c. Fingerprint cards and photographs may be retained when the court finds that any juvenile has committed a delinquent act, which if committed by an adult, is reportable to CCRE.
- d. Fingerprints and photographs may be retained by this agency and copies sent to CCRE in accordance with § 16.1-299 Code of Virginia.
- e. Arrest information (i.e. fingerprints, photographs, custody reports) which may be collected and made part of a juvenile arrest record will be retained for the specific length of time then disposed of as directed in the retention schedule.
- f. However, fingerprint cards and photographs will be destroyed when:
  - No petition is filed against a juvenile whose fingerprints or photographs have been taken in connection with an alleged violation of the law.
  - A juvenile is found not guilty by juvenile court or circuit court of a charge of delinquency.

### 14) Dissemination of juvenile arrest information

- a. Virginia Code § 16.1-301 requires that all law enforcement agencies take special precautions to ensure that law enforcement records concerning a child are protected against disclosure to any unauthorized person.
- b. Juvenile arrest information / records may be disseminated to individuals or agencies on a need to know basis to include:
  - A court having the child currently before it in any proceeding.

- The officers of public and non-governmental institutions or agencies to which the child is currently committed, and those responsible for his / her supervision after release.
  - Any other person, agency, or institution, by order of the court, having legitimate interest in the case or in the work of the law enforcement agency.
  - Law enforcement officers of other jurisdictions, by order of the court, when necessary for the discharge of their current official duties.
  - The probation and other professional staff of a court in which the child is subsequently convicted of a criminal offense for the purpose of a pre-sentence report or other dispositional proceedings, or by officials of penal institutions considering his / her parole or discharge or in exercising supervision over him / her.
  - The child, parent, guardian, or other custodian and counsel for the child by order of the court.
- c. Police officers may release, upon request to one another and to other local, state, or federal law enforcement officers, current information on juvenile arrests, limited to name, address, physical description, date of arrest, and charge for which the arrest was made. Such information may only be used for current investigation and not for the creation of new individual files or records

#### 15) Expungement / sealing of juvenile records

- a. Provisions for the expungement and sealing of juvenile arrest records are explained in detail in § 16.1-306 Code of Virginia and will be adhered to as mandated.

#### 4. Warrant / Wanted Persons File

##### A. The warrant / wanted persons file consists of components to include:

(1) Document file – Local warrants, warrants from other agencies, capias, etc., are filed in the agency computer system with information to include:

- Date and time received
- Nature of document
- Source of document
- Name of plaintiff / defendant / complainant / respondent



- Date of service and / or return
  - a. Documents shall be placed in a document holder located in the administrative office, and a list of current active warrants will be visible over the holder alerting officers to their need to make service.
  - b. Department personnel serving criminal process shall maintain records on activity forms with information for service / attempted service to include:
    - Name o person for whom service was attempted
    - Date and time of service / attempted service
    - Name of server
    - Location of service
    - Reason for non-service
  - c. Proper documentation of service / attempted service of criminal documents is the responsibility of shift supervisors and officers under their direction. Shift supervisors and their personnel will be held accountable for the service and maintenance of documents placed in their possession. Served documents will be returned to the local court of note immediately for local warrants, and outside agency warrants will be returned to the records clerk in order to be sent to the appropriate agency. In both cases a completed warrant control form will be forwarded to the records clerk so the computer files may be updated.

(2)Computer file – serves as the master name index which indicates active warrants are on file or possessed by this agency.

- B. Prior to approving any wanted person entry into the NCIC / VCIN system, the investigating officer will consult with the Chief of Police or designated supervisor, and the Commonwealth Attorney reference extradition / transporting subject if located. A Wanted Person NCIC / VCIN form and / or extradition form must be completed in order for the Clarke County Sheriff's Office Communications to make entry. A copy of the incident report and warrant must be attached to the entry form. Copies of the form will also be held with the original warrant in the Berryville Police Department warrant file.
- C. VCIN / NCIC manual guidelines will also be followed when verifying and canceling wanted person information.

- D. Information pertaining to any outstanding warrant on file shall be accessible to all personnel at all times. This data is found in the computer IBR system and outstanding warrants file.
- E. Information forwarded through VCIN / NCIC from other jurisdictions will be forwarded from the Clarke County Sheriff's Office Communications and placed on the shift information clipboard.

#### 5. Entry of information into NCIC / VCIN

- A. Information entry shall be handled through terminals and by certified communication specialists of the Clarke County Sheriff's Office.
- B. All personnel entering information into NCIC / VCIN will ensure such information is accurate and up to date.
- C. Personnel locating items or persons that have been entered into NCIC / VCIN will take steps to immediately cancel such entry.
- D. Officers having persons or items entered into NCIC / VCIN will as soon as possible check the entry, as entered by the dispatcher, to ensure the accuracy of the entry.

#### 6. Validation of VCIN / NCIC entries

- A. The Chief of Police will review the monthly report of all records entered by the agency.
- B. The Chief of Police will:
  - 1) Check the entries to ensure accuracy and validity.
  - 2) Ensure all available information is in each record.
  - 3) Remove all records found not correct.
- C. After validation review, the Chief of Police will sign the validation certification letter and return within five (5) days of the expiration of the certification date to:

Department of State Police  
Records Management Officer  
P.O. Box 27472  
Richmond, VA 23261-7472

- D. After the letter of certification has been mailed, the Chief of Police will:
  - 1) Send VCIN administrative message indicating agency's records have been validated.
  - 2) Include the document control number listed on the validation letter in the message.

#### 7. Indexes

- A. Master Name Index

- (1) The computer maintains a master name index through the IBR system that serves as a cross-reference to reports in which a person has been named.
  - (2) Names listed in the master name index include victims, offenders, complainants, and witnesses.
  - (3) A master name index listing persons issued traffic citations, persons involved in traffic accidents and persons injured in traffic accidents is maintained in the department's computerized IBR system, and maintained for five (5) years.
- B. An incident type index is maintained by the IBR system providing quick access to information, including location, regarding certain types of offenses / incidents which can be cross-referenced to reports, case files, etc. The Clarke County Sheriff's Office Communication Center also maintains a computerized incident type index of all incidents where Berryville Police Department officers are dispatched.
- C. Incident number index is maintained by the computer providing quick access to information for all reported incidents of law enforcement. The Clarke County Sheriff's Office Communication Center assigns the incident numbers in a sequential manner. The number starts with the year of the incident followed by a six (6) digit sequential number (example 2006-001234). No numbers are duplicated.
- D. Incidents by location; stolen / recovered property and found evidentiary property are also maintained by the IBR system.

#### 8. Daily Activity Reports (Attachment A)

- A. Prior to completion of each shift, officers are required to document activities of their shift for the purpose of passing on information and recording information.
- B. The Daily Activity Report shall be completed on the computer system and filed in the administrative office where it is available for all to review. The Chief of Police shall review each filed report and sign off on the document before it is filed.
- C. The Daily Activity Report shall be retained for three years.
- D. The report should include all pertinent information from the officer's shift to include traffic stops, calls answered, public services rendered, field contacts, etc. The second page of the report allows for an informative narrative. Attached to the report will be a vehicle equipment checklist verifying that the patrol vehicle was checked prior to the start of shift for any defects that require attention.

#### 9. Handling of Funds

- A. Records clerks are authorized and frequently called upon to perform certain non-mandated services in the department, and therefore are bonded in accordance with § 47.1-19 Code of Virginia.

- B. Non-mandated services performed by the records clerk personnel will be performed using the following fee schedule:

Offense Reports	\$5.00
Fingerprint Service	Free
Fingerprint Child	Free
Accident Reports	\$5.00
Criminal History Check	Free

- C. As required by the Department of Criminal Justice Services Board, a schedule of fees shall be posted in a place conspicuous to the public.

D. Procedure

- (1) Fees may be paid directly to the records clerk if they have exact change. The records clerk may either escort the requesting party to the Treasurer's Office or take the payment directly to the treasurer, but no records with a fee will be released without collecting payment.
- (2) Phone requests and those received by mail will first be required to send appropriate fees prior to the release of information.
- (3) The fee schedule and related questions will be coordinated by the records clerk and Chief of Police.

## ATTACHMENT A

### UNIFORM CRIME REPORTING OFFENSE CODES

U.C.R. Group A Offenses	Code#
Arson	200
Assault Offenses	
Aggravated Assault	13A
Simple Assault	13B
Intimidation	13C
Bribery	510
Burglary / B&E	220
Counterfeiting / Forgery	250
Destruction / Damage / Vandalism	290
Drug / Narcotic Offenses	
Drugs / Narcotic Violations	35A
Drug Equipment Violations	35B
Embezzlement	270
Extortion / Blackmail	210
Fraud Offenses	
False Pretense / Swindle	26A
Credit Card / Automatic Teller	26B
Impersonation	26C

Welfare Fraud	26D
Wire Fraud	26E
Gambling Offenses	
Betting / Wagering	39A
Operating / Promoting / Assisting	39B
Gambling Equipment Violations	39C
Sports Tampering	39D
Homicide Offenses	
Murder / Nonneg. Manslaughter	09A
Negligent Manslaughter	09B
Justifiable Homicide	09C
Kidnapping / Abduction	100
Larceny / Theft Offenses	
Pocket Picking	23A
Purse Snatching	23B
Shoplifting	23C
Theft From Building	23D
Theft From Coin Machine	23E
Theft From Motor Vehicle	23F
Theft of Motor Vehicle Parts	23G
All Other Larceny	23H
Motor Vehicle Theft	240
Obscene Material / Pornography	370
Prostitution Offenses	
Prostitution	40A
Assisting / Promoting Prostitution	40B
Robbery	120
Sex Offenses – Forcible	
Rape	11A
Sodomy	11B
Sexual Assault With Object	11C
Fondling / Indecent Liberties /	11D
Child Molesting	
Sex Offenses – Nonforcible	
Incest	36A
Statutory Rape	36B
Stolen Property Offenses	280
Weapons Violations	520
U.C.R. Group B Offenses	Code #
Bad Checks	90A
Curfew / Loitering / Vagrancy	90B
Disorderly Conduct	90C
Driving Under the Influence	90D
Drunkenness	90E

Family Offenses, Nonviolent	90F
Liquor Laws	90G
Peeping Tom	90H
Runaway	90I
Trespass	90J
Conspiracy to Commit Felony	90X
All Other Offenses	90Z

\* Exact code sections can be cross referenced to this table through the Virginia State Police website. Once on the site go to “Livescan”, then click on Livescan documents, forms, tables. Once at this stage click on “Statute Table” and browse for appropriate code section and the U.C.R. will be cross referenced.

### Open Burning

Chief White noted that there are currently no tools for the police to regulate fires that may cause a smoke nuisance. He presented sample ordinances from other jurisdictions. He said that the ordinance from the Town of Purcellville seems to be a good model for the town.

Mr. Nicholson said he also liked Purcellville's ordinance. The Council agreed to review the ordinances for discussion at the next Council meeting.

### Closed Session

It was moved by Council member Nicholson, second by Council member Kitselman that the Council of the Town of Berryville enter Closed Session pursuant to Section 2.2-3711.A.3 of the Code of Virginia, 1950, As Amended, for the purpose of discussing the disposition of interest in publicly held real property.

Recorded Vote:

Aye – Richard G. Sponseller, Mayor  
Jay Arnold, Recorder  
Wilson Kirby  
Allen Kitselman  
Barry Nicholson  
Lawrence Russell, III

Nay – None

Absent – None

It was moved by Council member Nicholson, seconded by Council member Russell and passed that the Council of the Town of Berryville adjourn Closed Session and return to regular session.

Recorded Vote:

Aye – Richard G. Sponseller, Mayor  
Jay Arnold, Recorder  
Wilson Kirby  
Allen Kitselman  
Barry Nicholson  
Lawrence Russell, III

Nay – None

Absent – None

It was moved by Council member Nicholson, seconded by Council member Russell and passed that the Council of the Town of Berryville adopt the attached Resolution Certifying Closed Session.

Recorded Vote:

Aye – Richard G. Sponseller, Mayor  
Jay Arnold, Recorder  
Wilson Kirby  
Allen Kitselman  
Barry Nicholson  
Lawrence Russell, III

Nay – None

Absent – None

Mr. Dalton then discussed the status of the lease for 33 ½ East Main Street. Council directed him to finalize a new lease agreement.

There being no further business, on motion by Council member Nicholson, seconded by Council member Kirby and passed the Council meeting was adjourned at 8:53 p.m.

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Richard G. Sponseller, Mayor

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Allan W. McWilliams, Recorder



TOWN COUNCIL  
MOTION FOR CLOSED SESSION

DATE: July 11, 2006

MOTION BY: Barry Nicholson

SECOND BY: Allen Kitselman

I move that the Council of the Town of Berryville enter Closed Session pursuant to Section 2.2-3711.A.3 of the Code of Virginia, 1950, As Amended, for the purpose of discussing the disposition of interest in publicly held real property.

Aye: Richard G. Sponseller, Mayor  
Jay Arnold, Recorder  
Wilson Kirby  
Allen Kitselman  
Barry Nicholson  
Lawrence Russell, II

Nay: None

Absent: None

ATTEST: \_\_\_\_\_  
Harry Lee Arnold, Jr., Recorder

**RESOLUTION**

MEETING DATE: July 11, 2006  
MOTION BY: Barry Nicholson  
SECOND BY: Lawrence Russell, III

**CERTIFICATION OF CLOSED SESSION**

WHEREAS, the Council of the Town of Berryville, Virginia (Council), has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712.D of the Code of Virginia requires a certification by this Council that such closed meeting was conducted in conformity with Virginia law,

NOW, THEREFORE, BE IT RESOLVED that the Council hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Council.

VOTE:

Ayes: Richard G. Sponseller, Mayor  
Jay Arnold, Recorder  
Wilson Kirby  
Allen Kitselman  
Barry Nicholson  
Lawrence Russell, III

Nays: None

Absent During Vote: None

Absent During Meeting:

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Harry Lee Arnold, Jr., Recorder